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No. 88-1897

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1988

MICHIGAN DEPARTMENT OF STATE POLICE and COL. R. T. DAVIS, Director of the Michigan Department of State Police,

Petitioners,

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v.

RICK SITZ, JOSEPH F. YOUNG, SR., DOMINIC J. JACOBETTI, DICK ALLEN, KEITH MUXLOW and JACK WELBORN,

Respondents.

BRIEF OF AMICUS CURIAE, MADD IN MICHIGAN, IN FAVOR OF PETITION FOR WRIT OF CERTIORARI TO THE MICHIGAN COURT OF APPEALS

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AMICUS CURIAE BRIEF BY
MOTHERS AGAINST DRUNK DRIVING (MADD)
IN MICHIGAN IN SUPPORT OF
PETITIONERS' JURISDICTIONAL STATEMENT

MADD in Michigan, with the consent of all parties involved, files the following Amicus Curiae Brief in favor of the Petition for Writ of Certiorari to the Michigan Court of Appeals.

STATEMENT OF INTEREST

MADD in Michigan incorporates by reference the Michigan Attorney General's legal arguments. The purpose of this Amicus Curiae Brief expands MADD in Michigan's traditional role of victims' assistance. By doing this, MADD's constituency truly becomes each and every citizen, because we wish to prevent the tragedy that drunk driving threatens to each of us. By allowing MADD in Michigan to file an Amicus Curiae Brief, and later

orally argue the merits, this Honored Court implicitly recognizes this group's aims.

Mothers Against Drunk Driving (MADD) was founded in May, 1980 to assist the victims of drunk driving. Almost immediately, it became clear that "victim assistance" meant more than providing counseling to drunk driving automobile crash survivors. It also meant "preventive medicine". It later became clear that one method of preventing drinking and driving was to encourage stricter sentencing as a future deterrent. Further, MADD supports stricter and more creative law enforcement, e.g. Sobriety Checkpoint programs.

MADD in Michigan does not presume to be so arrogant that it believes this

Supreme Court is not aware of the consequences of drinking and driving. However, in this Amicus Curiae Brief, we wish to present in the starkest statistical terms the magnitude of the drinking and driving problem facing our communities, the State of Michigan and the United States. This organization hopes that after the parties present their arguments, this Court will decide in favor of victims and potential victims, and against drunk driving.

ARGUMENT

I. STATISTICS FROM THE NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION (NHTSA)

The most comprehensive traffic accident statistics which NHTSA has provided centers on 1986. In that year, there were 6,390,000 automobile crashes - approximately nine (9%) percent, or

594,000, involved alcohol. In those smashups, 432,000 persons sustained minor injuries, 70,000 persons received moderate injuries, and another 52,000 received serious or greater injuries. (National Accident Sampling System, 1986).

Alcohol was involved in a greater proportion of nighttime crashes (i.e. 6:00 P.M. to 6:00 A.M.) than daytime crashes, and to a greater extent in weekend crashes than weekday crashes. During the weekend-nighttime period, alcohol was involved in nearly one of four automobile crashes (National Accident Sampling System 1986).

Drivers with suspended or revoked licenses and drivers with no licenses were five times as likely to have been drinking (25% and 23%, respectively) as were drivers with valid licenses (5%). Drivers

whose licenses had expired were alcohol involved 13% of the time (National Accident Sampling System 1986).

Drivers with previous convictions for driving while intoxicated (DWI) reveal fearsome numbers. Those whose record contained more previous DWI convictions were much more likely to have been drinking and involved in an auto crash than were drivers with fewer previous DWI convictions. Those with one previous DWI conviction were involved in 41% of alcohol related smashups, and those with two or more prior DWI convictions were involved in 35% of the alcohol related crashes. However, those with no previous DWI convictions were involved only five (5%) percent of the time in alcohol related crashes. The common threads in these statistics are alcohol consumption and

driving, previous run-ins with the law, and the continued, unabated threat these drivers pose to society's security. (National Accident Sampling System 1986).

Next, statistics clearly show that far too many automobile crashes take place after one car's driver had been drinking and registered a blood alcohol content (BAC) greater than .10%, the presumptive level of intoxication in Michigan.

The real tragedy of drinking and driving is the personal injury and fatality rates. According to NHTSA, traffic crashes killed 46,056 people in 1986 (Alcohol Involvement In Fatal Traffic Crashed, 1986). Forty one (41%) percent, or about 18,929, of these fatalities, occurred in crashes in which a driver or non-occupant was drunk. Additionally, 11%, or 5,112, of these fatalities

involved a driver or non-occupant who had been drinking, but whose BAC was below .10%, the presumptive level of legal intoxication in most states. (Alcohol Involvement In Fatal Traffic Crashes, 1986).

Of the 60,297 drivers involved in fatal crashes in 1986, 8.5% fell in the .01-.09% BAC group, and 25.7% were at or above the .10% BAC, the presumptive level of legal intoxication in Michigan and most other states. Similarly, of the 7,775 fatally injured non-occupants, 6.9% fell in the .01-.09% group, and 28.9% were at or above the .10% BAC (Alcohol Involvement In Fatal Traffic Crashes, 1986). These figures are significant because they show that <u>drivers who survive a fatal crash are much less frequently drunk than are fatally injured drivers</u>. This seems to be

the case of other statistics reported thus far: The less alcohol, the less likely there will be an injury or fatality. Further, fatally injured drivers show higher alcohol levels than surviving drivers in all types of crashes and time periods.

Traffic crashes are the greatest single cause of death for people between the ages of 5 and 34, and more than half of these fatalities are alcohol related (Drunk Driving Facts). Close to 26% of all drivers in fatal crashes were drunk at the time of the crash (Drunk Driving Facts). It should be clear that these statistics present a grim picture of safety on our highways. More needs to be done. Sobriety Checkpoints are yet another method of getting the drunk driver off the road with a minimum amount of

inconvenience. It is another piece in the complicated puzzle of trying to solve the drunk driving problem.

II. STATISTICS FOR MICHIGAN

The Michigan Department of State Police in its "1987 Michigan Drunk Driving Audit Report" particularizes the above statistics for the State of Michigan. They have compiled the following for the State of Michigan between January 1 and September 30, 1987:

1. The total population in the State of Michigan was 9,170,000.
2. The total number of people operating under the influence of liquor (OUIL) and driving while impaired (DWI) was 63,966.
3. There were 76,079 personal injury accidents accounting for

112,325 persons injured. Of these, there were 11,941 personal injury accidents accounting for 18,790 persons injured where alcohol was involved. For this time period, that is a total of 13.02 personal injury accidents per 10,000 population, accounting for 20.49 persons injured per 10,000 population in drinking and driving smashups.

4. For the same time period, there were 1,040 fatal crashes accounting for 1,158 people killed. Of these, 492 fatal crashes accounted for 566 persons killed where alcohol was involved. This means that per 10,000 population, there were .54 fatal crashes and .62 persons killed where drinking and driving were involved.

5. There were 10.15 personal injury accidents accounting for 15.98 persons injured per 100 miles of road in Michigan. Michigan has over 117,597 miles of roads. This also means there were .42 fatal accidents for 100 miles of road accounting for .48 people killed where drinking and driving were involved.

In Wayne County, where Detroit is located, with a population of a little

over 2.2 million people, there were 18,420 personal injury accidents injuring 27,095 people. Of these, there were 2,336 personal injury accidents injuring 3,767 people where drinking and driving were involved. This means there were 33.42 personal injury accidents and 53.89 persons injured per 100 miles of road in Wayne County, and 10.54 personal injury accidents accounting for 17 people injured per 10,000 population.

Also, for this nine month period in 1987, in Wayne County there were 159 fatal accidents killing 171 people. Per 100 miles of road, this was 1.07 fatal accidents, killing 1.17 people where drinking and driving was involved. Per 10,000 population, this is .34 fatal accidents and .37 persons killed. However, there were only 11,607 arrests

during that same time period for OUIL and DWI. There were still another approximately 3,000 people who had been drinking and driving that escaped law enforcement attempts at curbing the serious problem, which means that approximately 25% of the total number on drinking and driving personal injury accidents, fatal accidents, and arrests went undetected until someone was hurt. While it is admirable that the police caught 75% of this figure, it is of little consolation to the victims and their families that another 25% escaped detection.

The Wayne County Circuit Court and Court of Appeals found as fact that the sobriety checkpoints were only effective in detecting 1% of the people who had been drinking and driving at any one

point. Therefore, of the almost 3,000 personal injury and fatal smashups in Wayne County, approximately 30 of these crashes could have been avoided had the appropriate sobriety checkpoint been in place before the accident occurred. Also, of the little more than 4,000 persons injured and killed, approximately 40 could have been saved. While these numbers may appear small to the objective eye, to the victims these numbers are indeed large. Almost nine people could still be alive today if the sobriety checkpoints had been in place.

A common misunderstanding is that the rate of alcohol related crashes is greater in a metropolitan area than the quiet serenity of the rural area known affectionately as "up north" in Michigan. In fact, of the five counties

with the most distressing statistics (Baraga, Crawford, Leelanau, Mackinac, Ogemaw, and Van Buren) two are among the most picturesque, i.e., Leelanau and Mackinac Counties. For the first nine months of 1987, Mackinac registered a population of approximately 10,100 people. There were 89 personal injury accidents accounting for 127 persons injured. There were 14 personal injury accidents accounting for 20 persons injured where drinking and driving were involved. This means that per 10,000 population, there were almost 14 personal injury accidents accounting for almost 20 persons injured where drinking and driving were involved.

Also, in the same county, there were three fatal accidents killing three people. Two of the three fatal

accidents, killing two people, involved drinking and driving. A clear 67%, therefore, of all fatal accidents in Mackinac County during this time period involved drinking and driving. More alarming is the fact that approximately two people per 10,000 population were involved in a drinking and driving fatal crash killing approximately two people.

It is safer, from a drinking and driving perspective, to live in Wayne County than it is in Mackinac County, because the chance of being killed in a drinking and driving related crash is vastly greater in Mackinac County than in the latter. If you apply the same rate of fatal crashes to Wayne County that are found in Mackinac County, 440 people would have been killed in Wayne County during the first nine months of 1987

rather than 82 actually reported. If such were the case, the cry for tougher legislation and law enforcement to rid the roads of drunk drivers would compare with the media's and law enforcement's urgent talk about the number of teenagers killed by handguns in Detroit, and the overall murder rate there.

This Supreme Court will recall that in the tragic Northwest Airlines Flight #255 crash which occurred on August 16, 1987 at Detroit's Metropolitan Airport, 156 people died, making it the second worst air crash in our nation's history. Imposing the Mackinac County rate of fatal drunk driving auto crashes on Wayne County, which would result in 440 people killed, would mean approximately 2.82 airline crashes in one location for the nine month period in question. Recalling

the emotional effect Northwest Flight #255 left on each of us, imagine our sense of rage and sorrow if almost three Northwest Airlines Flight #255s occurred in a nine month period in Wayne County or any other metropolitan area. Again, these statistics scream for more tools which law enforcement requires to reduce the number of drinking drivers on the road. Give Michigan's police the tools to fix the problem! Give them the sobriety checkpoints!

III. THE AUSTRALIAN EXPERIENCE

The Australian drinking and driving experience is similar to that of the United States. There, alcohol abuse was the single most important factor contributing to road crash deaths and

injuries "where solid drinking by the majority of the community is normal behavior" ("The Influence of Alcohol..."). Australia has developed a drinking and driving control package including a blood alcohol legal limit of .05g%, compulsory blood alcohol testing of casualties, random breath testing (i.e. sobriety checkpoints) and heavy penalties. The major difference between the Australian measures and those in the United States seems to be the fact that they have sobriety checkpoints which some states in the United States have declared unconstitutional or do not have in effect. Another difference, is that presumptive intoxication in the State of Michigan, and in most other states, is .10g%, while in Australia, it is .05g%.

It is interesting to note that Australia has adopted drunk driving countermeasures similar to those that Surgeon General Dr. C. Everett Koop recently recommended. Dr. Koop came out in favor of reducing the drunk driving BAC level of legal intoxication to .04g%, compulsory BAC testing for all drivers involved in fatal and serious injury traffic collisions and, relevant to this Amicus Curiae Brief, sobriety checkpoints. Given the opportunity to file an Amicus Curiae Brief on the merits, MADD in Michigan will go into Dr. Koop's recommendations further.

In any event, the Asia-Pacific Journal of Public Health, volume 1, number 1, of January, 1987 states that Australia's drunk driving countermeasures have been effective in reducing the

national percentage of drivers and riders killed with an illegal blood alcohol concentration from the 44% in 1981 to 36% in 1984. Between 1970 and 1984, there was a decreased fatality rate per 10,000 registered vehicles from 8.5 to 2.9 where alcohol was involved. In the State of Victoria, there was a fall in alcohol effected casualties from 39% in 1977 to 25% in 1984.

One of the measures instituted in Australia and credited with changing drinking and driving behavior is random breath testing (RBT), otherwise known as sobriety checkpoints in the U.S. In the Asia-Pacific Journal of Public Health at page 45, it stated regarding RBT:

> "The effectiveness of RBT is linked with the intensity of its application. Its high deterrent effect has played a significant

role in shifting community attitudes towards drunk driving. There is fear of detection and the consequences. RBT enables police to screen breath tests without having a reason but any long term effect is dependent on maintaining a high level of continued visible police enforcement backed up by publicity. The value deterrence has been demonstrated in New South Wales where testing has been a high one in three. Following introduction of RBT in 1982, there was an 18-20% reduction in fatalities, and there was a fall in the percentage of fatally injured drivers and riders with illegal BACs from 41% in 1981 to 33% in 1985. An intensive RBT blitz in Victoria carried out over a seven-week period in 1978 and backed with high publicity resulted in a 24% reduction in night time serious casualty crashes in the areas blitzed. The cost benefit of RBT is significant - in the first three years of operation in New South Wales, there was an estimated savings of eight million dollars.

Since RBT was introduced in Victoria, the percentage of motorists exceeding 0.05g% when tested a Preliminary Breath Testing Stations has fallen from 2.2% in 1976 to 0.7% in 1985. However, the number tested in

> Victoria needs to be more than double to approach the rates achieved in New South Wales and Tasmania."

IV. SIGNIFICANCE OF FEDERAL AND STATE STATISTICS AND THE AUSTRALIAN EXPERIENCE

MADD in Michigan believes that the best way to reduce drinking and driving is increased, sustained public awareness. MADD in Michigan engages in virtual continual promotion of the message: Don't drink and drive! In early Fall each year, MADD co-sponsors the "Drive for Life" campaign. Each American is asked not to drink and drive on a designated day.

During the Christmas holidays, MADD asks each person to "Tie One On" for safety, by attaching a red ribbon to each car's antenna or door handle. After Christmas is a candlelight vigil commemorating those who have died because

of the drunk driver. In 1988, in Genesee County, Michigan alone, the SADD (Students Against Drunk Driving) and MADD chapters cut and distributed 100,000 red ribbons. The county's population is only 440,000.

However, these projects could become meaningless without our government's institutional backing. Without the force of law throwing its full and heavy weight behind these efforts, these projects could become exercises in futility and frustration. They could be viewed as spineless, public relations tricks. They would remain pep rallies without the big game ever being played -- and drunk driving will continue.

Sobriety checkpoints not only yank the drunk driver off the road, but serve notice to all those who could pass

through not to drink and drive. If a checkpoint can be set up at anytime having maximum effect, the potential drunk driver faces the possibility of being detected and hauled-in before he or she does damage. The more this happens, the less likely the drunk driver will want to chance being caught.

The Wayne County Circuit Court and Michigan Court of Appeals held the sobriety checkpoints unconstitutional because there was potential, subjective fear and surprise. But, who really will be fearful and surprised? Certainly, a teetotaller will not be afraid or surprised, because there is absolutely nothing to be concerned about. Does the honest citizen have to be concerned about an IRS audit? Does an electrician have to be concerned about fatal shock if the electricity is disconnected?

On the other extreme is the very drunk driver. If he is so drunk that he attempts to run a checkpoint, then he will suffer no fear or surprise - or any other appropriate emotion. Obviously, this person must be removed from the roads, and these checkpoints would effectuate this purpose.

The only one who may suffer fear and surprise is the auto driver who's been drinking - he may seek to escape the checkpoint. If that occurs, then strategically placed State Police Troopers will apprehend and arrest those who attempt to get away. Under such circumstances, there will be the necessary "probable cause" to do an alcohol test and arrest the drunk driver.

Further, the drunk driver, who's so bold and irrational that he or she

attempts to run the checkpoint, is the one the program is set up to catch. If someone attempts to run the checkpoint, it is obvious that probable cause exists for a search and seizure, and arrest.

Checkpoints will not only help rid the roads of another menace, but prevent and deter future crashes. When combined with legislation taxing the drunk driver with costs of the checkpoint, the offender is criminally and financially responsible for his or her actions. The Australian experience shows that if the government pulls out all stops, the drunk driver can be removed from the road. As the number of drunk drivers decreases the number of drunk driving crashes, injuries and fatalities likewise will decrease. The results would justify the minimal inconvenience to those stopped for a few seconds, and lives will be saved.

Finally, isn't it interesting that checkpoints to catch so-called illegal immigrants are legal, but to catch illegal drunks are not in Michigan? The immigrant has come to this country for the freedom and opportunity it offers, and to contribute to its wealth. The drunk driver destroys others' freedom and opportunity, and depletes our primary national treasure -- our people.

CONCLUSION

Drunk driving is totally controllable. If effectively controlled, almost 3/4 of all fatalities in auto crashes would never happen. Billions of dollars each year would be saved. The spillover into other areas of our

national consciousness is bound to enhance our quality of life.

MADD in Michigan asks this Honored Court to grant the following relief:

A) Grant the Petition for Certiorari so that we may commence a national debate not only on this checkpoint issue, but the whole drunk driving problem.

B) Reverse the Michigan Courts' rulings, and hold the Sobriety Checkpoint in Michigan as constitutional.

C) Allow counsel for MADD in Michigan to argue orally whenever possible during these proceedings' pendency. Give us the tool to reach the American people through its most time honored way -- our judicial system.

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